

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Robert Derek Lusch SS.

16CV 9343

Write the full name of each plaintiff.

No. _____
(To be filled out by Clerk's Office)

-against-

COMPLAINT
(Prisoner)

Police Officer Janelyn Lorenzana,

Police Officer Dominick Vitale (Shield

number 21711), City of New York

Do you want a jury trial?

☒ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

RECEIVED
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2016 DEC -1 PM 3:53
S.D. OFFICE

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

<u>Robert</u>	<u>D.</u>	<u>Lurch</u>
First Name	Middle Initial	Last Name

Robert Derek Lurch Jr.

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Rikers Island NYSID# [REDACTED] FCF DIN: 16A2468

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Franklin Correctional Facility

Current Place of Detention

62 Base Hill Road, P.O. Box 10

Institutional Address

<u>Franklin, Malone</u>	<u>NY</u>	<u>129</u>
County, City	State	Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced prisoner
- ☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

Janelyn Iorenzana
 First Name Last Name Shield #
Police Officer
 Current Job Title (or other identifying information)
 Current Work Address

Defendant 2:

Dominick Vitalc 21711
 First Name Last Name Shield #
Police Officer
 Current Job Title (or other identifying information)
 Current Work Address

Defendant 3:

County, City State Zip Code
 First Name Last Name Shield #
 Current Job Title (or other identifying information)
 Current Work Address

Defendant 4:

County, City State Zip Code
 First Name Last Name Shield #
 Current Job Title (or other identifying information)
 Current Work Address
County, City State Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: 1521 Sterling place, County of Kings, State of New York

Date(s) of occurrence: June 15, 2014 (Fathers Day)

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

- See Attached -

Details of Incident

Date: 10/12/

2016

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Events of
Incident in
chronological
order

claims:
false
arrest

unknown NYPD officer on June 15, 2014 (Father's Day 2014) approached a group of individuals on the corner of Sterling and Rochester located in the crown heights area of Brooklyn, New York. The individuals was gathered around an apartment staircase located directly in front of the apartment buildings. I was amongst the individuals in which I stopped while walking through to ask the location of the closest store that accepts Ebt cards (food stamps), so I can order a sandwich with my card. In the middle of me being given directions to such a location, a NYPD officer exited his vehicle and asked for my ID. I asked him for what reason and he again requested for my ID. I produced my ID handing it to the officer and the officer stated "who bottle is that." The officer was referring to an open empty Ciroc bottle that was located in front of the apartment building steps, displayed almost as a trophy of accomplishment showing it was drunk to completion and is the preferred brand to buy. I told the officer I was just getting directions for the nearest location accepting ebt, in not from around here I wouldn't have a clue. He asked a second individual for his ID as the ten

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the names waiting for an active warrant confirmation through his police radio I stated "I have no warrants". The other individual stated "he works for a living he doesn't have any either". After the radio transmission came back negative for active warrants for me and the other individual, the officer stated "You both going to jail." When I was escorted to the car in handcuffs I inquired what I was arrested for and the other individual did the same. The officer ignored our questions but when the officer placed me in the car he asked me "who shot that guy"? I informed the officer I wasn't present when any shooting occurred, I briefly stopped on the walk through to ask for directions. The officer got angry at my response and slammed the door. I was brought to the 77 precinct and placed in the holding cell with the other individual. Once in the holding cell we both asked what we were under arrest for and again the officer ignored us. A couple of hours later we were provided with cheeseburgers from McDonald's to eat. I again after we were fed, asked the officer "what am I under arrest for it's Father Day." The officer stated "as soon as they arrive, you both will be free to go." We were held in the precinct for 24 hours before a detective came to interview us both, separately. The detective that came to interview me asked "Do you have any information on the shooting

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that took place minutes before you were arrested?"

I told the detective I wasn't on the scene at the time of the shooting. He told me I can go back downstairs to the holding cell," the interview had ended. After I was interviewed, the individual that was arrested after me went upstairs to get interrogated. He came back also, minutes later. When that individual returned, I told the officer "I told you I wasn't on the scene for the occurrence, this is why I spent Father's day in a holding cell this is ridiculous," I stated. The officer ignored my comment. We was held 4 more hours after the interviews concluded and then brought to Brooklyn Central Bookings. I asked the officer that brought us "what am I being booked for, officer?" He said "open container violation." I called the officer corrupt and after being processed, I was placed in the holding pens for court. A couple hours later I seen a public defender (an attorney) and I informed them "I'm not pleading guilty, I only stopped on that block to ask for directions, I wasn't drinking." I went to my first appearance later that night and I was released on my own recognizance on June 16, 2014. The charges was later dismissed on Dec 15, 2014 after adjournment in contemplation of dismissal CPL 170.55. I was arrested on Father's day because an officer

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wanted me interrogated about a shooting I wasnt on the scene to witness and had to spend 30 plus hours in custody (from a couple hours after noon fathers day 2014 to past 10 PM in the night the following day).

I spent the whole holiday and most of the following day in the holding cell with no privacy, no showers, no change of clothing, fed unhealthy food during the entire stay, and no toilet in the cell. I was then transported to Brooklyn Central Bookings that was kept in worse condition. on Dec. 17/2014 these records were sealed pursuant to CPL 160.50 Termination of Criminal action in favor of accused.

claim #1

False arrest

Being in possession of an open container of alcohol

claim

In public is a violation of New York City Administrative

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code §10-125. This statute provides that: "No person shall

... possess, with intent to drink or consume, an open

container containing an alcoholic beverage in any public

place except at a block party, feast, or similar function

for which a permit has been obtained" (ID. §10-125(b)).

statute

guidelines

The statute contains a presumption that "possession

of an open container containing an alcoholic beverage by

any person shall create a rebuttable presumption that

such person did intend to consume the contents thereof

in violation of this section" (ID. §10-125(c)). This statute

has been enforced by the New York courts, see, e.g.,

People v. Bothwell, 261 A.D.2d 232, 690 N.Y.S.2d 231

(1st Dept 1999), and a similarly-worded statute has

been held constitutional (see People v. Elhage, 147 A.D.2d

911, 537 N.Y.S.2d 375 (4th Dept 1989)). The carry of an

open can of beer or liquor bottle by itself creates

sufficient probable cause under the terms of the statute.

False

arrest

claim

requirements

My 1983 claim for false arrest derives from my fourth

amendment right to remain free from unreasonable seizures,

which includes the right to remain free from an arrest

absent of probable cause (Weyant v. Orst, 101 F.3d 845

(2d Cir. 1996)). An officer has probable cause to arrest

when he or she has "knowledge or reasonably trustworthy

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Information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime" (ID); see also *Dunaway v. New York*, 442 U.S. 200 (1979). Under New York Law, a police officer may arrest an individual when the officer has probable cause to believe that the individual has committed a petty offense, including a violation, in his presence and in his geographical area of employment (see New York Criminal Procedure Law § 140.10(2)(a); § 1.20(39)).

Complete

Defense to

False arrest

claim

Under the Fourth amendment, a warrantless arrest is constitutionally valid if the arresting officers had probable cause to make the arrest at the time of the arrest (see *Beck v. Ohio*, 379 U.S. 89, 91 (1964); see also *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1974); *Brinegar v. United States*, 338 U.S. 160, 165 (1949)). The existence of Probable cause serves as a legal justification for an arrest and an affirmative defense to a false arrest claim (see *Martinez v. City of Schenectady*, 97 N.Y.2d 78 (2001)).

Lack of

Probable Cause

Lack of Probable cause to arrest or prosecute is an essential element of false arrest (see *Rivera v. City of New York*, 40 A.D.3d 334 (2007)). Now once the officer left his vehicle, approached the plaintiff, asked for identification, and inquired whether the open vodka bottle in front of the apartment stairs was the plaintiff's, a Terry stop (Investigative detention) was

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being conducted.

In not disputing that the officer didn't have reasonable suspicion to conduct a Terry stop. There was an open container amongst a group of individuals when the officer exited his vehicle, which gives the officer reasonable suspicion that one of these individuals is violating the New York City Administrative Code § 24-125(b), which justifies the officer detaining any one of those individuals to ascertain because no one was observed carrying the bottle, who was in possession of this bottle, whether it was open or closed; and if open, whether it contained alcohol.

However once those inquiries were answered and the information possessed by the officer was Plaintiff was not observed carrying an open container which the statute requires, was not the owner of the open container in question, was only amongst the group of individuals to ask for directions, and the container in question was in fact empty; this officer did not have probable cause to arrest nor did probable cause arise after Plaintiff response to the officer inquiries. Furthermore the officer did not even have probable cause to arrest the second individual, where that individual wasn't even questioned concerning the open container violation nor did that individual have open warrants, which shows that officer had no probable cause to arrest the Plaintiff or the other individual for

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violating the new york city administrative code § 10-125
and the reason for these arrest had a collateral purpose
behind it.

State claim #1

False arrest

(State claim

These officers while acting within the scope of their employment as New York City Police Officers violated my 4th amendment rights in violation of Section 1983 and New York State law claims of false arrest. The City of New York is liable under the respondent superior doctrine for my state law claim of false arrest.

liability

Unlike my false arrest claim pursuant to 42 USC § 1983, a municipality may be held vicariously liable for torts committed by its employee while acting within the scope of his or her employment (See *Eckardt v. City of White Plains*, 87 A.D.3d 1049; *Ashley v. City of New York*, 7 A.D.3d 712).

To establish a cause of action alleging false arrest under New York common law, a plaintiff must show that "(1) the defendant intended to confine him or her (2) the Plaintiff was conscious of the confinement, (3) the Plaintiff did not consent to the confinement, and (4) the confinement was not otherwise privileged" (See *Lee v. City of New York*, 272 A.D.2d at 586; see *Broughton v. State of New York*, 37 N.Y.2d 451).

These City employees intended to confine the plaintiff to question him (myself) about an incident that plaintiff had no knowledge of. Plaintiff was aware of his confinement, questioning these City officers about the specific details as to why he was under arrest. Plaintiff did not consent to

the confinement and last but not least, the SC officers did not have probable cause to arrest Plaintiff for open container violation nor did they have reasonable suspicion to justify detaining the Plaintiff in connection with the shooting that occurred prior to the Plaintiff's arrest allegedly.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

Im suing these officers for violation of my fourth
amendment rights for compensatory/punitive damages
in the amount of \$2,000,000 (2 million Dollars).

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>11/17/2016</u>		<u>Robert Lurch</u>
Dated		Plaintiff's Signature
<u>Robert</u>	<u>D</u>	<u>Lurch</u>
First Name	Middle Initial	Last Name
<u>62 Bare Hill road, P.O. Box 10</u>		
Prison Address		
<u>Franklin, Malone</u>	<u>NY</u>	<u>12953</u>
County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: 11/25/2016

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

CERTIFICATE OF DISPOSITION
NUMBER: 615188

THE PEOPLE OF THE STATE OF NEW YORK
VS

LURCH, ROBERT
Defendant

[REDACTED]
Date of Birth

[REDACTED]
Address

[REDACTED]
NYSID Number

[REDACTED]
City State Zip

06/15/2014
Date of Arrest/Issue

Docket Number: 2014KN045190

Summons No:

AC 10-125
Arraignment Charges

Case Disposition Information:

Date	Court Action	Judge	Part
06/16/2014	ADJOURNED - CPL SECTION 170.55	WALKER, C	APAR3
12/15/2014	DISMISSED - CPL SECTION 170.55	JOHNSON, R	AP2

SEALED

NO FEE CERTIFICATION

pursuant to Section 160.50 of the CPL

☐ GOVERNMENT AGENCY ☐ COUNSEL ASSIGNED

☐ NO RECORD OF ATTORNEY READILY AVAILABLE. DEFENDANT STATES COUNSEL WAS ASSIGNED

SOURCE ☐ ACCUSATORY INSTRUMENT ☐ DOCKET BOOK/CRIMS ☐ CRC3030 [CRS963]

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN
THIS COURT.

JACKSON, C
COURT OFFICIAL SIGNATURE AND SEAL

11/09/2016
DATE

FEE: NONE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

Criminal Court of the City of New York

Part APAR County of Kings

THE PEOPLE OF THE STATE OF NEW YORK

V.

ROBERT LURCH

State of New York

County of Kings

Defendant

Police Officer Janelyn Lorenzana, shield number , says that on or about June 15, 2014 at approximately 7.48 PM at 1521 Sterling Place, County of Kings, State of New York, the defendant committed the offense of:

AC 10-125(B) CONSUMPTION OF ALCOHOL IN PUBLIC

in that the defendant did:

DRINK OR CONSUME AN ALCOHOLIC BEVERAGE, OR POSSESS, WITH INTENT TO DRINK OR CONSUME, AN OPEN CONTAINER CONTAINING AN ALCOHOLIC BEVERAGE IN ANY PUBLIC PLACE EXCEPT AT A BLOCK PARTY, FEAST OR SIMILAR FUNCTION FOR WHICH A PERMIT HAD BEEN OBTAINED.

The source of deponent's information and the ground for deponent's belief are as follows:

The deponent is informed by the sworn statement of Police Officer Dominick Vitale, shield number 21711 that, at the above time and place, the informant observed the defendant on a sidewalk which is a public place, and in possession of an open bottle of 'Grey Goose' containing an alcoholic beverage, namely vodka.

The deponent is informed by the sworn statement of informant that informant has had professional training as a police officer in the identification of alcoholic beverages; recognized the odor emanating from the above-described container as that of an alcoholic beverage; recognized the above-described container or packaging to be characteristic of an alcoholic beverage; observed the label of the above-described container to indicate that its contents were alcoholic.

False statement made in this document are punishable
as a class a misdemeanor pursuant to section 210.45 of the Penal Law.

June 16 2014

[Signature]

2014KN045190



Printed: 6/16/14 3:49

K14653526 Arrested 06/15/14 19:48

Criminal Court of the City of New York

County of Kings Date 11/9/2016

I hereby certify that the within is a true

Copy of the Record on file at this Court

[Signature]
Court Clerk